



DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2022-0083]

Qualification of Drivers; Exemption Applications; Implantable Cardioverter Defibrillators (ICDs)

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

ACTION: Notice of applications for exemption; request for comments.

SUMMARY: FMCSA announces receipt of applications from three individuals for an exemption from the prohibition in the Federal Motor Carrier Safety Regulations (FMCSRs) against operation of a commercial motor vehicle (CMV) by persons with a current clinical diagnosis of myocardial infarction, angina pectoris, coronary insufficiency, thrombosis, or any other cardiovascular disease of a variety known to be accompanied by syncope (transient loss of consciousness), dyspnea (shortness of breath), collapse, or congestive heart failure. If granted, the exemptions would enable these individuals with ICDs to operate CMVs in interstate commerce.

DATES: Comments must be received on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments identified by the Federal Docket Management System (FDMS) Docket ID FMCSA-2022-0083 using any of the following methods:

- Federal eRulemaking Portal: Go to www.regulations.gov/, insert the docket number, FMCSA-2022-0083, in the keyword box, and click “Search.” Next, sort the results by “Posted (Newer-Older),” choose the first notice listed, and click on the “Comment” button. Follow the online instructions for submitting comments.

- Mail: Dockets Operations, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12-140, Washington, DC 20590-0001.
- Hand Delivery: West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal Holidays.
- Fax: (202) 493-2251.

To avoid duplication, please use only one of these four methods. See the “Public Participation” portion of the SUPPLEMENTARY INFORMATION section for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, (202) 366-4001, fmcsamedical@dot.gov, FMCSA, DOT, 1200 New Jersey Avenue SE, Room W64-224, Washington, DC 20590-0001. Office hours are from 8:30 a.m. to 5 p.m., ET, Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Dockets Operations, (202) 366-9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

A. Submitting Comments

If you submit a comment, please include the docket number for this notice (Docket No. FMCSA-2022-0083), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to www.regulations.gov, insert the docket number FMCSA-2022-0083 in the keyword box, and click “Search.” Next, sort the results by “Posted (Newer-Older),” choose the first notice listed, click the “Comment” button, and type your comment into the text box on the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

FMCSA will consider all comments and material received during the comment period.

B. Viewing Comments

To view comments go to www.regulations.gov. Insert the docket number, FMCSA-2022-0083, in the keyword box, and click “Search.” Next, sort the results by

“Posted (Newer-Older),” choose the first notice listed, and click “Browse Comments.” If you do not have access to the internet, you may view the docket online by visiting Dockets Operations in Room W12-140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590-0001, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366-9317 or (202) 366-9826 before visiting Dockets Operations.

C. Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to www.regulations.gov, as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at www.transportation.gov/privacy.

II. Background

Under 49 U.S.C. 31136(e) and 31315(b), FMCSA may grant an exemption from the FMCSRs for no longer than a 5-year period if it finds such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption. The statute also allows the Agency to renew exemptions at the end of the 5-year period. FMCSA grants medical exemptions from the FMCSRs for a 2-year period to align with the maximum duration of a driver’s medical certification.

The three individuals listed in this notice have requested an exemption from § 391.41(b)(4). Accordingly, the Agency will evaluate the qualifications of each applicant to determine whether granting the exemption will achieve the required level of safety mandated by statute.

The physical qualification standard found in § 391.41(b)(4) states that a person is physically qualified to drive a CMV if that person has no current clinical diagnosis of myocardial infarction, angina pectoris, coronary insufficiency, thrombosis, or any other

cardiovascular disease of a variety known to be accompanied by syncope, dyspnea, collapse, or congestive cardiac failure.

In addition to the regulations, FMCSA has published advisory criteria¹ to assist medical examiners in determining whether drivers with certain medical conditions are qualified to operate a CMV in interstate commerce. The advisory criteria states that ICDs are disqualifying due to risk of syncope.

III. Qualifications of Applicants

Timothy Broome

Mr. Broome is a CMV driver in South Carolina. A January 18, 2022, letter from Mr. Broome's cardiologist reports that his ICD was initially implanted in December 2004 for paroxysmal ventricular tachycardia. His cardiologist's letter reports that on October 27, 2011, Mr. Broome's ICD was explanted and replaced with a different model, and on August 13, 2019, that model was explanted and replaced with his current model. His letter also reports that Mr. Broome was treated in January 2018 with a ventricular tachycardia ablation, that he has experienced no ICD shocks or therapies since December 2017, his underlying heart condition is NYHA Class 1- functional status, he is asymptomatic, and his left ventricular ejection fraction was 25 to 30 percent on his last echocardiogram in 2018.

Bryce Alyn Norman

Mr. Norman of California does not operate but intends to operate a CMV if granted an exemption. A November 4, 2021, letter from his cardiologist reports that Mr. Norman has catecholaminergic polymorphic ventricular tachycardia, that he had a cardiac arrest in 2019 and now has an ICD and is taking medication. The cardiologist's letter states that he sees no contraindications for Mr. Norman to drive a CMV as long as he is

¹ These criteria may be found in 49 CFR part 391, Appendix A to Part 391—Medical Advisory Criteria, Section D. Cardiovascular: § 391.41(b)(4), paragraph 4, which is available on the internet at <https://www.gpo.gov/fdsys/pkg/CFR-2015-title49-vol5/pdf/CFR-2015-title49-vol5-part391-appA.pdf>.

compliant with his medication. A letter of March 9, 2022, from a second cardiologist provides the same diagnosis, stating that Mr. Norman has had no other events since 2019, his ICD has never deployed, he is asymptomatic, and his current heart condition is stable.

Abiud Ortuno

Mr. Ortuno is a CMV driver in the Florida. A February 18, 2022, letter from Mr. Ortuno's cardiologist reports that an ICD was implanted in December 2020 for Brugada syndrome. His cardiologist's letter reports that Mr. Otuno has not experienced shocks from the device, that he has stable cardiac functioning, and indicates that that he may operate a CMV from a cardiac standpoint.

IV. Request for Comments

In accordance with 49 U.S.C. 31136(e) and 31315(b), FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. We will consider all comments received before the close of business on the closing date indicated under the DATES section of the notice.

Larry W. Minor,

Associate Administrator for Policy.

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